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8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. R-2004

12 APRIL CHRISTINE NEELY
1473 Sumner Avenue
13 Napa, CA 94558

A C C U S A T I O N

14 Respiratory Care Practitioner License No. 19331

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Respiratory Care Board of California, Department of
21 Consumer Affairs.

22 2. On or about April 24, 1997, the Respiratory Care Board issued Respiratory
23 Care Practitioner License Number 19331 to April C. Neely (Respondent). The Respiratory Care
24 Practitioner License expired on November 30, 2002, and has not been renewed.

25 DISCIPLINARY HISTORY

26 3. To determine the degree of discipline, if any, to be imposed on Respondent,
27 Complainant alleges that on or about November 27, 1996, the Board filed Statement of Issues no.
28 S-240 against respondent, based on her convictions on April 5, 1989 and March 19, 1990 to

1 violations of Hawaii Revised Statute Code section 712-1200, prostitution. On January 13, 1997,
2 respondent entered into a stipulated settlement for a one year probationary license effective April
3 24, 1997. On April 28, 1998, respondent completed probation. That decision is now final,
4 attached as **Exhibit A**, and is incorporated ~~by reference~~ JURISDICTION if fully set forth.

5 4. This Accusation is brought before the Respiratory Care Board (Board),
6 Department of Consumer Affairs, under the authority of the following laws. All section references are
7 to the Business and Professions Code unless otherwise indicated.

8 5. Section 3710 of the Code states: "The Respiratory Care Board of
9 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
10 the Respiratory Care Practice Act]."

11 6. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
12 revoke licenses to practice respiratory care as provided in this chapter."

13 7. Section 3750 of the Code states:

14 "The board may order the denial, suspension or revocation of, or the imposition of
15 probationary conditions upon, a license issued under this chapter, for any of the following
16 causes:

17 "(d) Conviction of a crime that substantially relates to the qualifications, functions,
18 or duties of a respiratory care practitioner. The record of conviction or a certified copy
19 thereof shall be conclusive evidence of the conviction.

20 "(g) Conviction of a violation of any of the provisions of this chapter or of any
21 provision of Division 2 (commencing with Section 500), or violating, or attempting to
22 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
23 violate any provision or term of this chapter or of any provision of Division 2 (commencing
24 with Section 500).

25 8. Section 118, subdivision (b), of the Code provides that the suspension,
26 expiration, or forfeiture by operation of law of a license issued by a board in the department, or its
27 suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its
28 surrender without the written consent of the board, shall not, during any period in which it may be

1 renewed, restored, reissued or reinstated, deprive the Board of its authority to institute or continue
2 a disciplinary proceeding against the licensee upon any ground provided by law or to enter an
3 order suspending or revoking the license or otherwise taking disciplinary action against the
4 licensee on any such ground.

5 9. Section 492 provides, in relevant part, that:

6 "Notwithstanding any other provision of law, successful completion of any
7 diversion program under the Penal Code, or successful completion of an alcohol and drug problem
8 assessment program ... shall not prohibit any agency... from taking disciplinary action against a
9 licensee or from denying a license for professional misconduct, notwithstanding that evidence of
10 that misconduct may be recorded in a record pertaining to an arrest."

11 10. Section 3752 of the Code states:

12 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
13 made to a charge of any offense which substantially relates to the qualifications, functions, or
14 duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this
15 article. The board shall order the license suspended or revoked, or may decline to issue a license,
16 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
17 or when an order granting probation is made suspending the imposition of sentence, irrespective of
18 a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or
19 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
20 dismissing the accusation, information, or indictment."

21 11. California Code of Regulations, title 16, section 1399.370, states:

22 "For the purposes of denial, suspension, or revocation of a license, a crime or act
23 shall be considered to be substantially related to the qualifications, functions or duties of a
24 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
25 perform the functions authorized by his or her license or in a manner inconsistent with the
26 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
27 those involving the following:

28 "(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting

1 the violation of or conspiring to violate any provision or term of the Act.

2 COST RECOVERY

3 12. Section 3753.5, subdivision (a) of the Code states:

4 "In any order issued in resolution of a disciplinary proceeding before the board, the
5 board or the administrative law judge may direct any practitioner or applicant found to have committed
6 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
7 prosecution of the case."

8 13. Section 3753.7 of the Code states:

9 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
10 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
11 and service fees."

12 14. Section 3753.1 of the Code states:

13 "(a) An administrative disciplinary decision imposing terms of probation may include,
14 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
15 monitoring the probation. "

16 FIRST CAUSE FOR DISCIPLINE

17 (Conviction)

18 15. Respondent is subject to disciplinary action under sections 3750(d) and
19 3752 [conviction of a substantially related crime] and 3750(g) in that she was convicted of a
20 violation of Health & Safety Code section 11364, possession of drug paraphernalia. The
21 circumstances are as follows:

22 16. On or about November 19, 2004, respondent was living with D.C. in
23 Vallejo, California. Vallejo Police Officer G. Simpson served a search warrant at the residence by
24 knocking at the door. Respondent opened the door, and was present during the search. In the
25 bedroom, Officer Simpson located a purse containing a lipstick case. The case contained a
26 methamphetamine pipe which was blackened with a white internal residue.

27 ///

28 A. Respondent was issued citation no. 215183 for a violation of Health &

1 Safety code section 11364, possession of controlled substance paraphernalia and released.

2 B. On January 5, 2005, in Solano County Superior Court case no.
3 VCR176397, respondent entered a guilty plea to the violation of Health & Safety code section
4 11364. She was admitted to a deferred entry of judgment program; and ordered to participate in
5 counseling, Alcoholics Anonymous (AA) and Narcotics Anonymous (NA), sixteen times in sixty
6 days. She was ordered to appear before the Court for a progress report on March 8, 2005.

7 C. On March 8, 2005, respondent failed to appear at the progress report
8 because she was in the hospital. The matter was continued to March 29, 2005. On March 29,
9 2005, respondent failed to appear for the hearing. A bench warrant in the amount of \$5,000.00
10 was issued, and deferred entry of judgment was revoked.

11 17. On or about June 8, 2005, Vallejo Police Officer Kevin McCarthy and
12 Detective Bautista conducted a parole search of R.L. Respondent was present in the room at that
13 time, and the officers asked if she had any illegal items in her possession. She replied "no" and
14 gave consent to a search of her belongings. Officer McCarthy searched her purse and found a
15 glass smoking pipe wrapped in tissue. In Officer McCarthy's training and experience, the glass
16 pipe is consistent with use for smoking methamphetamine. Respondent was placed under arrest
17 for a violation of Health & Safety Code section 11364, possession of controlled substance
18 paraphernalia, and Penal Code section 1320(a), failure to appear at the March 29, 2005 court
19 hearing in Solano County.

20 A. On June 10, 2005, respondent signed an Agreement for Release on
21 Promise to Appear in Solano County Superior Court on June 30, 2005. The June 8, 2005 arrest
22 was consolidated with case no. VCR 176397.

23 B. On August 31, 2005, respondent admitted the violation of Deferred Entry
24 of Judgment (DEJ). DEJ was reinstated with new terms. She was ordered to attend/complete
25 Narcotics Anonymous four times per week for six months; and to pay the outstanding balance of
26 any fines. Upon providing proof of attendance at the next court date of February 28, 2006, the
27 criminal case will be dismissed.

28 18. Therefore, respondent's license is subject to discipline in that she was

1 convicted of a violation of Health & Safety Code section 11364, possession of controlled
2 substance paraphernalia, in violation of Business & Profession code sections 3750(d) and 3752
3 [substantially related conviction], and 3750(g).

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7 1. Revoking or suspending Respiratory Care Practitioner License Number
8 19331, issued to April Christine Neely.

9 2. Ordering April Christine Neely to pay the Respiratory Care Board the costs
10 of the investigation and enforcement of this case, and if placed on probation, the costs of probation
11 monitoring;

12 3. Taking such other and further action as deemed necessary and proper.
13

14 DATED: October 20, 2005
15
16

17 Original signed by Liane Zimmerman for:

18 STEPHANIE NUNEZ

19 Executive Officer

20 Respiratory Care Board of California

21 Department of Consumer Affairs

22 State of California

23 Complainant
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